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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

10 Jeremy Pinson,
11 Petitioner,
12 v.
13 Barbara Von Blanckensee,
14 Respondent.

No. CV-20-00071-TUC-RM

ORDER

16 Pending before the Court is Plaintiff's "Motion for Order for Transfer
17 PreClearance and to Cease Tampering with Mail." (Doc. 23.) Plaintiff's Motion seeks an
18 Order directing that leave of Court be obtained before transferring Plaintiff to another
19 facility. (*Id.* at 2-3.) The Motion also appears to request reconsideration of the Court's
20 Order denying her Petition (*id.* at 3-6), which Petitioner construes as "preliminary relief"
21 pursuant to Fed. R. App. P. 8.

22 This case was closed on October 6, 2022, when the Court adopted in part and
23 modified in part Magistrate Judge Rateau's Report and Recommendation recommending
24 denial of Petitioner's 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus and denied the
25 Petition. (Docs. 17, 19, 20.) On January 6, 2023, Plaintiff filed a Notice of Appeal with
26 the Ninth Circuit Court of Appeals. (Doc. 21.)¹

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28 ¹ The Notice of Appeal appears to indicate that Petitioner filed a Notice of Appeal prior
to this date that the Court did not receive. (Doc. 21.)

1 Plaintiff's filing of a Notice of Appeal divests this Court of jurisdiction over the
 2 issues raised in the Motion that are also raised on appeal. "The filing of a notice of appeal
 3 is an event of jurisdictional significance—it confers jurisdiction on the court of appeals
 4 and divests the district court of its control over those aspects of the case involved in the
 5 appeal." *United States v. Novak*, 2022 WL 16951340, at *2 (E.D. Cal. Nov. 15, 2022)
 6 (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). "[T]he principle
 7 of divestiture is not absolute; there are exceptions." *Id.* (citing *United States v. Phelps*,
 8 283 F.3d 1176, 1181 n.5 (9th Cir. 2002)). "The purpose of the rule is to promote judicial
 9 economy and avoid the confusion of having the same issues before two courts
 10 simultaneously." *Id.* Because this matter is now before the Ninth Circuit Court of
 11 Appeals, this Court lacks jurisdiction over Plaintiff's Motion to the extent that the issues
 12 raised in the Motion are coextensive with those raised on appeal. To the extent that this
 13 Court retains jurisdiction over any matters raised in the Motion, it will deny the Motion
 14 for the following reasons.

15 Plaintiff argues that Fed. R. App. P. 23(a) requires leave of court before a habeas
 16 litigant may be transferred. That Rule provides:

17 Pending review of a decision in a habeas corpus proceeding
 18 commenced before a court, justice, or judge of the United
 19 States for the release of a prisoner, the person having custody
 20 of the prisoner must not transfer custody to another unless a
 21 transfer is directed in accordance with this rule. When, upon
 22 application, a custodian shows the need for a transfer, the
 23 court, justice, or judge rendering the decision under review
 24 may authorize the transfer and substitute the successor
 25 custodian as a party.

26 Fed. R. App. P. 23(a).

27 The habeas corpus proceeding before this Court, now on appeal to the Ninth
 28 Circuit Court of Appeals, does not implicate Petitioner's release from custody. Rather,
 the Petition involved claims regarding administrative review of Petitioner's placement in
 the Special Housing Unit (SHU). (See Doc. 19.) Furthermore, Petitioner does not allege
 that her custody is pending transfer; the Motion states that she is "pending redesignation

1 in SHU.” (Doc. 23.) There is no indication that placement or “redesignation” in the SHU
 2 falls within the meaning of a custody transfer under Fed. R. App. P. 23. Accordingly,
 3 Plaintiff’s request for leave of court before her custody is transferred will be denied.

4 Plaintiff argues that Fed. R. App. P. 8 permits her to “seek a remedial order
 5 pending litigation, but not before presenting it to the District Court.” (Doc. 23 at 3.)
 6 Petitioner then proceeds to argue grounds for reconsideration of the Court’s October 6,
 7 2022 Order denying her Petition. (*Id.* at 3-6.) Rule 8 provides:

- 8 (1) Initial Motion in the District Court. A party must
 ordinarily move first in the district court for the following
 relief:
- 9 (A) a stay of the judgment or order of a district court pending
 appeal;
- 10 (B) approval of a bond or other security provided to obtain a
 stay of judgment; or
- 11 (C) an order suspending, modifying, restoring, or granting an
 injunction while an appeal is pending.

12 Fed. R. App. P. 8(a).

13 Petitioner does not request a stay of the relevant Order, nor any other relief under
 14 Rule 8. Rather, she “disagrees with the Court’s conclusions” and disputes the Court’s
 15 legal conclusions and factual determination. (Doc. 23 at 3-6.) Thus, the Motion does not
 16 present grounds for staying the judgment and Order under Rule 8. To the extent that
 17 Plaintiff is requesting reconsideration of the October 6, 2022 Order, the Motion is
 18 untimely. LRCiv. 7.2(g) (absent good cause, a motion for reconsideration shall be filed
 19 no later than 14 days after the filing of the order). Furthermore, the issues raised in this
 20 portion of the Motion are coextensive with Petitioner’s appeal and the Court therefore
 21 lacks jurisdiction to decide them.

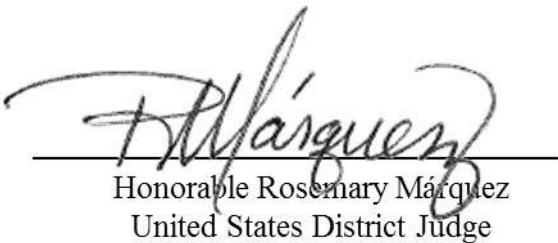
22 Lastly, Petitioner asks that Respondent be ordered to cease tampering with
 23 Petitioner’s mail and “must begin a log of each piece of legal or special mail received
 24 from the petitioner with the date of receipt and date of mailing, all outgoing legal mail or
 25 special mail the same as it logs incoming legal or special mail.” (*Id.* at 7.) Plaintiff
 26 supports this request with allegations that her mail and the mail of other inmates has

1 disappeared and that she has overheard mailroom staff “openly bragging about shredding
2 and opening legal and special mail.” (*Id.* at 1-2.) The Court does not find grounds to grant
3 relief based on these conclusory and unsupported allegations.

4 Accordingly,

5 **IT IS ORDERED** that the Motion for Order for Transfer PreClearance and to
6 Cease Tampering with Mail (Doc. 23) is **denied**.

7 Dated this 30th day of January, 2023.

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11 Honorable Rosemary Márquez
12 United States District Judge
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